

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3668 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and

MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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ORIENTAL INSURANCE CO.LTD.

Versus

SHARDABEN KANUBHAI PATEL  
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Appearance:

MR AJAY R MEHTA for Petitioner  
MR PR NANAVATI for Respondent No. 1  
RULE SERVED for Respondent No. 5  
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CORAM : MR.JUSTICE Y.B.BHATT and  
MR.JUSTICE A.K.TRIVEDI

Date of decision: 17/12/1999

ORAL JUDGEMENT

1. Appeal admitted. Mr. P.R. Nanavaty appears and waives service on behalf of the respondents no.1 to 4. Learned Counsel for the appellant states that respondent no.5 need not now be served again since he had been served at the notice stage of the appeal and has chosen to remain absent and had also remained absent though served before the Tribunal.

2. On a joint request of learned Counsel for the respective parties, this appeal is taken up for final hearing today.

3. A short point urged before us today is that the Tribunal has acted in haste for delivering his judgment and award and it has deprived the Insurance Company of leading proper evidence in support of its contentions and this has resulted in miscarriage of justice. The facts on which this contention is based are not in dispute and learned Counsel for the respondents no.1 to 4 is also unable to contest the facts upon which this contention is raised.

4. Briefly speaking, the facts of the present case, are as under:

4.1 On 4th March, 1998, the claim petition in question was transferred to the Auxillary Tribunal which has passed the impugned judgment and award. On the same day, the claimants evidence was recorded, and on the same day the claimants filed an application for production of documents by list.

4.2 On 5th March, 1998 the claimants produced a list of documents. It is pertinent to note, at this stage, that the claimants had not closed their evidence. On the same day, the Insurance Company filed an application for issuance of witness summons which included the witness summons to appropriate officer of the RTO. This application was granted, and the witness summons was made returnable on 9th March, 1998. On 9th March, 1998, the claimants filed an application for enhancement of the claim, the Insurance Company filed an application for adjournment on the ground that the witness summons could not be served, and therefore, another witness summons is required to be issued. In spite of this situation, the Tribunal granted the claimants application for enhancement of the claim and delivered its judgment and award on the very same day.

5. On these facts, which are not disputed, we have no hesitation in holding that the impugned judgment and

award does not represent a just decision which would cover the contentions of the parties thereto, and is particularly, in violation of the principles of natural justice. The impugned judgment and award are, therefore, quashed and set aside. The case is remanded back to the Tribunal, and shall be heard and decided from the stage at which it was left. It is clarified that Insurnce Company will be entitled to lead and adduce evidence as permissible in law, and the witness summons which could not be served on 9th March, 1998 shall be re-issued for an appropriate date.

6. This appeal is accordingly allowed with no order as to costs.

7. It is clarified that 30% of the amount deposited before the Tribunal, which has been released in favour of the claimants, shall not be disturbed, and 70% of the balance of the amount deposited, if invested shall also not be disturbed. It is further clarified that the interest which may accrue on such investment shall be added on to the deposit/investment and shall not be released in favour of the claimants. This arrangement shall continue until the Tribunal hears and decides the matter afresh as directed hereinabove.

8. It is stated before us that the amount due under the impugned award and deposited before the Tribunal is the entire amount which was required to be deposited under the award. Under these circumstances, the amount of Rs.25,000/- deposited in this Court, may be refunded to the present appellant.

(Y.B.Bhatt,J.)

(A.K.Trivedi,J.)

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